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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MINNEAPOLIS, MN 55432-9924			EXAMINER SMITH, TERRI L	
			ART UNIT	PAPER NUMBER
			3762	
			MAIL DATE	DELIVERY MODE
			07/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/781,245

Applicant(s)

RECEVEUR ET AL.

Examiner

Terri L. Smith

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 12 is/are allowed.
- 6) ☒ Claim(s) 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 1-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10-30-06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 30 October 2006 have been fully considered but some of them are not persuasive. Applicant did not address the specification objection regarding proper antecedent basis for the claimed subject matter not being provided. Consequently, Examiner upholds said objection.

Regarding some of Applicant's arguments against claims 1–12 that were rejected under 35 U.S.C. 112, second paragraph, Examiner respectfully disagrees. Applicant's argument that the "sensor comprising" language in claim 1 is not vague is not persuasive. As currently written, it cannot be determined to which element the term "comprising" is describing. As written, it is not clear if "comprising" is describing to the implantable device or the sensor. Applicant's continued argument of what the claim relates to is likewise not persuasive. Rather than argue what the claim relates to, it is suggested to write the claim language to positively and clearly state what is being claimed.

With respect to Applicant's argument that the "means for hermetically sealing" is not vague is also not persuasive. Applicant directed Examiner to the specification to construe the means-plus-function claims, but Applicant did not point to where in the specification to look. Examiner is requesting that Applicant specifically indicate where in the specification the means-plus-function for the claim can be found. As a result, Examiner maintains said 35 U.S.C. 112, second paragraph rejections.

2. Applicant's arguments, see pages 8 and 9, filed on 30 October 2006, with respect to claims 1, 3–6 and 8–10 have been fully considered and are persuasive. The 35 U.S.C § 102(b)

Art Unit: 3762

rejection as being anticipated by Brehier, U.S. Patent 5,000,179 of claims 3–6, 8 and 10 has been withdrawn. Additionally, Applicant's arguments with respect to claims 11–12 have been fully considered and are persuasive. The 35 U.S.C § 102(b) rejection as being anticipated by Fraley et al., U.S. Patent Application Publication 2002/0165588 of claims 3–6, 8 and 10 has been withdrawn. Finally, Applicant's arguments with respect to claims 1, 3, 6 and 7 have been fully considered and are persuasive. The 35 U.S.C § 103(a) rejection as being unpatentable over Fraley et al., U.S. Patent Application Publication 2002/0165588 of claims 1, 3, 6 and 7 has been withdrawn.

Specification

3. The disclosure is objected to because of the following informalities:

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In claim 12, “an insulating ring disposed within the sleeve and hermetically sealed thereto” is not disclosed in the specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the Applicant regards as his invention.

5. Claims 1–10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In claim 1, the phrase “sensor comprising” is vague. It is unclear if the sensor or the implantable medical device is being described.

Art Unit: 3762

In claim 9, "means for hermetically sealing the means for sensing" is vague. In accordance with 37 C.F.R. 1.75, Applicant is required to specifically state what the means for hermetically sealing comprises by relating it to elements from the specification.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 9–10 are rejected under 35 U.S.C. 102(b) as being anticipated by Brehier, U.S. Patent 5,000,179.

8. Brehier discloses an implantable device (Fig. 1) comprising: means for sensing a physical parameter (7); and means for hermetically sealing a means for sensing (column 2, lines 15–18 and 21–22); means for sensing is a temperature sensor (7) (claim 10).

Allowable Subject Matter

9. Claims 11–12 are allowed.

10. Claims 1–8 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this Final Action is set to expire THREE MONTHS from the mailing date of this Action. In the event a first reply is filed within TWO MONTHS of the mailing date of this Final Action and the Advisory Action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the Advisory Action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the Advisory Action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this Final Action.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Terri L. Smith whose telephone number is 571-272-7146. The Examiner can normally be reached on Monday - Friday, between 7:30 a.m. - 4:00 p.m..

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



TLS
June 27, 2007

27 June 2007



GEORGE R. EVANISKO
PRIMARY EXAMINER

6/28/7